

DRAFT

**GUIDELINES FOR PUBLIC PRIVATE PARTNERSHIPS  
FOR THE EXECUTIVE OFFICE OF ENVIRONMENTAL AFFAIRS  
AND THE ENVIRONMENTAL AGENCIES**

**SECRETARY OF ENVIRONMENTAL AFFAIRS  
EOEA OFFICE OF PUBLIC PRIVATE PARTNERSHIPS  
DEPARTMENT OF CONSERVATION AND RECREATION  
DEPARTMENT OF ENVIRONMENTAL PROTECTION  
DEPARTMENT OF FISH AND GAME  
DEPARTMENT OF AGRICULTURAL RESOURCES**

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## I. INTRODUCTION

In 2003, the Secretary of Environmental Affairs established an Office of Public Private Partnerships (“OPPP”) in order to create a new model of stewardship for our public environmental and recreational assets. This major initiative is a key step towards ensuring long-term preservation of the Commonwealth’s open space and public infrastructure legacy through the sustaining of present and the creation of new public private partnerships. OPPP is designed to foster partnerships that will draw upon the strengths and abilities of public environmental agencies as well as those in the private sector. Working in coordination with OPPP, the Executive Office of Environmental Affairs (EOEA) and its environmental agencies, including the Department of Conservation and Recreation (DCR), the Department of Environmental Protection (DEP), the Department of Fish and Game (DFG) and the Department of Agricultural Resources (DAR) (collectively, the “Environmental Agencies”) seek to create a culture of shared responsibility for our public environmental and recreational assets that will maximize benefits to the public. The mission of OPPP includes the following:

- 1) strengthening trust in the public realm, increasing community involvement, supporting our existing partners and friends groups, and creating new partnerships;
- 2) building a participatory process about how the environmental agencies plan for, manage, and maintain our public lands and infrastructure for maximum public benefit;
- 3) engaging institutions and corporations, large and small, as long-term partners;
- 4) optimizing revenue from existing sources, permits, contracts and leases, and pursuing new revenue sources for our state lands, facilities and programs; and
- 5) expanding programs for youth, particularly youth in densely populated areas, and providing consistent programming that can ease the transition into the workforce.

These “Guidelines for Public Private Partnerships for the Executive Office of Environmental Affairs and the Environmental Agencies” (the “Guidelines”) articulate principles that will guide EOEA and the Environmental Agencies in their management and decision-making about public private partnerships. The Guidelines are general in nature; the specific facts and circumstances of each partnership proposal must be considered in determining whether a particular public private partnership opportunity is appropriate.

EOEA and the Environmental Agencies acknowledge that they have a duty and a responsibility to provide responsible stewardship of the resources under their control. EOEa and the Environmental Agencies will seek compatible, creative, and innovative partnerships, along with other creative solutions, to help offset the rising costs associated with infrastructure needs and other demands on environmental agency resources.

## **II. RELATIONSHIP OF THE GUIDELINES TO THE EOEa ARTICLE 97 LAND DISPOSITION POLICY**

EOEA and the Environmental Agencies must attempt to meet their fiscal and stewardship challenges without relinquishing responsibility for the protection of land and facilities that are critical to their respective missions. EOEa and its agencies must meet these challenges while maintaining the rigorous protections afforded publicly owned open spaces by Article 97 of the Articles of Amendment to the Massachusetts Constitution, as it is interpreted in the “EOEA Article 97 Land Disposition Policy.” In addition, EOEa supports DCR’s establishment of its Article 97 Lands Committee.

The EOEa Article 97 Policy provides as follows:

It is the policy of EOEa and its agencies to protect, preserve and enhance all open spaces covered by Article 97 of the Articles of Amendment to the Constitution of the Commonwealth of Massachusetts. Accordingly, as a general rule, EOEa and its agencies shall not sell, transfer, lease, relinquish, release, alienate, or change the control or use of any right or interest of the Commonwealth in and to Article 97 land. The goal of this policy is to ensure no net loss of Article 97 lands under the ownership and control of the Commonwealth and its political subdivisions.

This EOEa Article 97 Policy also makes an important distinction between the disposition of Article 97 lands versus compatible and consistent uses of Article 97 lands not involving a disposition, and provides as follows:

An Article 97 land disposition is defined as: a) any transfer or conveyance of ownership or other interests; b) any change in physical or legal control; and c) any change in use, in and to Article 97 land or interests in Article 97 land owned or held by the Commonwealth or its political subdivisions, whether by deed, easement, lease or any other instrument effectuating such transfer, conveyance or change. A revocable permit or license is not considered a disposition as long as no interest in real property is transferred to the permittee or licensee, and no change in control or use that is in conflict with the controlling agency's mission, as determined by the controlling agency, occurs thereby.

EOEA is committed to ensuring that any disposition of property under environmental agency care, custody and control occurs only in accordance with the provisions of the EOEa Policy. EOEa is also committed to promoting the consistent and compatible uses of its Article 97 lands, in order to provide the public with services at its facilities that will enhance and promote recreational activities appropriate to the resource by the public. Given the legal constraints and protections involved in seeking the legislatively-authorized transfer of an interest in Article 97 land, EOEa and its agencies are mindful that, as stated within the EOEa Article 97 Policy, a revocable permit or license "is not considered a disposition" and that permitting or licensing consistent and compatible Article 97 uses affords EOEa and its agencies greater flexibility in weighing proposed short-term and long-term activities on Article 97 property. EOEa encourages the submission of reasoned proposals that are consistent with, support and enhance the mission of the applicable environmental agency, that do not seek a permanent interest in the land, and do not result in the loss of EOEa agency control over that land.

EOEA and the Environmental Agencies may seek partnerships, such as joint management and maintenance agreements or licenses, where appropriate to facilitate ongoing operating and maintenance improvements to better achieve the mission of EOEa or its agencies. Partnerships are designed to supplement and not supplant resources provided to EOEa and the Environmental Agencies through the state budgetary process.

### **III. GUIDING PRINCIPLES OF PUBLIC PRIVATE PARTNERSHIPS**

1. Partnerships shall provide a public benefit that is consistent with the mission, goals and objectives of EOEa and the Environmental Agency partner involved.
2. Partnerships should increase the ability of the Environmental Agency partner to be stronger stewards of public environmental assets.
3. Partnerships involving public land or interests therein shall be compatible with the protection of the natural, cultural, historic, agricultural, habitat and recreational resources of the public land involved, and consistent with the EOEa Article 97 Land Disposition Policy.
4. Partnerships involving a specific portion of a state property under the care, custody and control of one of the Environmental Agencies shall be compatible with any management plan or ongoing management planning efforts for that property.
5. Partnerships should serve the general public, and provide reasonable public access, use and enjoyment for all the citizens of the Commonwealth appropriate for the applicable public asset.

6. EOEA and the Environmental Agencies will pursue innovative partnerships and other means to address equity issues to provide better services and facilities in underserved parks and other agency public facilities in low-income communities.
7. Partnership recognition must be compatible with the natural resource or public facility and the statutes governing these resources and facilities, and should not detract from the visitor experience.
8. Partnership activities that increase scientific understanding of environmental issues or ecological resources for stewardship or educational purposes that further the mission of the applicable agency are encouraged.
9. Partnerships that are self-sustaining are strongly encouraged. In general, any partnerships that could result in increased capital, maintenance and operation responsibilities to EOEA or the Environmental Agencies will be evaluated in the context of the following:
  - (a) the extent to which the partnership furthers the policies or statutory mission of EOEA or the applicable Environmental Agency;
  - (b) the impact on the overall operating and capital budget resources of EOEA and the applicable Environmental Agency;
  - (c) the extent to which partners are contributing towards reducing capital, maintenance and operating responsibilities of EOEA and the applicable agency;
  - (d) the extent to which the partnership enhances delivery of services to the public; and
  - (e) in the case of a partnership involving land acquisition to protect significant natural, cultural, historic, recreational, habitat or agricultural resources, the extent to which efforts are made to reduce increased capital, maintenance and operational responsibilities consistent with the core land and resource protection mission of the applicable agency.

#### **IV. DESCRIPTION OF DIFFERENT TYPES OF PARTNERSHIPS**

There are many different kinds of partnerships already underway throughout EOEA and its Environmental Agencies. EOEA and the Environmental Agencies will continue to explore innovative and creative public private partnerships such as partnerships with other federal, state and local governmental entities, with non-profit organizations, private individuals, corporations, other businesses, educational institutions, stakeholders and volunteers that enhance the mission of EOEA and the applicable agency and the delivery of services to the public.

The following is a list, by no means exhaustive, of different types of partnerships typical of EOEA and one or more of the Environmental Agencies.

1. Agreements with non-profit organizations – Non-profit organizations are partners that assist EOEA and the Environmental Agencies with a wide variety of delivery of services to the public, including assistance with land management and acquisitions, partnerships to maintain facilities such as museums open to the public, assistance with conservation and agriculture restriction monitoring, partnerships that support habitat protection and agriculture, and many others. Non-profits are often key partners for EOEA and the Environmental Agencies when there is compatibility of goals and missions.
2. Volunteers at public lands and facilities - Volunteers provide many hours of public service at Environmental Agencies' facilities in support of the environment. Volunteers, for example, assist DCR in trail maintenance work. EOEA and the Environmental Agencies encourage the use and support of volunteers at public facilities and lands, while maintaining good communication with agency staff.
3. Friends Groups - Many of DCR's reservations, parks, forests and other properties have Friends Groups that are site-specific advocates for the stewardship, operation and maintenance of these facilities. Friends Groups are critical to fundraising and volunteering to assist in the successful maintenance and operation of these facilities, and in creating a culture of shared responsibility for our public environmental assets. OPPP will work with DCR to increase the number of Friends Groups as appropriate and needed for DCR facilities and properties, and to develop DCR memoranda of understanding with Friends Groups where needed to define the relationship between a particular group and the agency.
4. Gifts to the Environmental Agencies - Certain of the Environmental Agencies have statutory authorization to receive gifts, bequests, devises, restitution and donations of land, money or personal property in support of the agency mission. For example, DCR has a Conservation Trust, Mass. Gen. L. ch. 132A, § 1, and a Urban Parks Trust Fund, Mass. Gen. L. ch. 92, § 34, established to receive such outside contributions for its facilities.
6. Event Sponsors - EOEA and its Environmental Agencies rely upon generous sponsors of many educational, civic and recreational events each year at environmental agency facilities. Many event sponsors provide entertainment and activities to the public free of charge, and agree to assume certain risks, liabilities and costs associated with the event. For example, radio and television stations sponsor events at the DCR Hatch Shell in Boston and other venues within the parks system. As another example, food vendors, radio stations, beach associations and other non-profits provide food, entertainment, and services for

Coastsweep, an annual statewide beach cleanup event organized by EOEa Office of Coastal Zone Management. Sponsorship of events is often handled through revocable special permits or licenses or other memorandum of understanding between the sponsor and the applicable agency.

7. Sustaining Sponsors – EOEa and its Environmental Agencies work closely with certain sponsors of agency programs to sustain ongoing partnerships. For example, private non-profit organizations currently fund volunteer coordinators working with DCR to increase volunteerism at particular DCR facilities.
8. Partnerships for Scientific Research, Data Collection and Restoration Efforts – EOEa and the Environmental Agencies partner with educational institutions, corporations, non-profits, and citizens to promote scientific research, data collection and restoration efforts. For example, the Department of Fish and Game has a number of successful partnerships with volunteers who collect data and assist the agency's habitat restoration efforts including the River in Stream Flow Stewards, River Continuity Volunteers, Wild and Scenic River Partnerships, and also partnerships for removal of dams in disrepair. The EOEa Office of Coastal Zone Management (CZM) Corporate Wetlands Restoration Partnership brings together agency, corporate and university resources and expertise to study and restore degraded wetlands. DCR has a program that utilizes citizen volunteers to collect rainfall data.
9. Stakeholder Groups – EOEa and the Environmental Agencies meet with stakeholder groups to provide feedback and discussion of environmental policy, regulatory issues and agency programs. For example, DEP meets regularly with stakeholders to get early input on how proposed regulatory changes may impact the public and the regulated community. Examples of DEP stakeholder groups include, but are not limited to, the Hazardous Waste Advisory Committee, the Solid Waste Advisory Committee, the Toxics Use Reduction Act Administrative Council, the Water Management Act Advisory Committee, the Waste Site Cleanup Program Advisory Committee and the Fees Advisory and Policy Committee. As another example, DAR has an Agricultural Land Preservation Committee that reviews and evaluates proposed agricultural and nonagricultural activities on Agricultural Preservation Restriction lands.



## **V. EOEА AND AGENCY REVIEW OF PARTNERSHIP PROPOSALS**

One of the purposes of these Guidelines is to develop a procedure for interdisciplinary discussion of partnership proposals by EOEА and its Environmental Agencies to ensure that partnerships further the mission of EOEА and the applicable agency and that partnerships enhance delivery of services to the public.

### **A. EOEA/DCR PARTNERSHIP TEAM**

A key initiative and focus of EOEА's OPPP and DCR is the review, development and implementation of partnerships to assist in the maintenance of public lands and facilities at DCR's parks, reservations, forests and other facilities and enhance the ability of DCR to deliver services to the public.

To facilitate these partnerships, EOEА's OPPP and DCR are implementing an interdisciplinary EOEА/DCR Partnership Team. The EOEА/DCR Partnership Team shall be chaired by the Executive Director of OPPP, and its members shall include the EOEА Director of Revenue Enhancement and the EOEА General Counsel, and the following members from DCR: 1) the Director of the Division of Urban Parks and Recreation; 2) the Director of the Division of State Parks and Recreation; 3) the Director of the Division of Water Supply Protection; 4) the Deputy Commissioner for Planning and Engineering; 5) the Director of the Office of External Affairs and Partnerships; 6) the Director of Partnerships; and 7) the General Counsel. The EOEА/DCR Partnership Team may also include such additional staff as determined to be appropriate from time to time by the Secretary and the DCR Commissioner.

The EOEА/DCR Partnership Team will meet at least monthly to review partnership proposals for consistency with these guidelines, ability to further the missions of EOEА and DCR, feasibility of implementation, and for final recommendation to the Secretary and the DCR Commissioner. When there is a need to respond more quickly, members of the EOEА/DCR Partnership Team may be polled to provide input prior to a monthly meeting. The EOEА/DCR Partnership Team will work closely with the Secretary, the DCR Commissioner, DCR and EOEА managers and staff.

The EOEА/DCR Partnership Team will discuss partnership proposals periodically with the DCR Stewardship Council and keep the Stewardship Council informed about partnerships and seek its input.

### **B. INTER-AGENCY PARTNERSHIP TEAM**

The Executive Director of OPPP shall meet at least quarterly with the Commissioners of the Environmental Agencies and appropriate staff to discuss partnership opportunities and implementation at each of the Environmental

Agencies. OPPP will provide resources and models to facilitate partnerships at these agencies that are consistent with these Guidelines. This Inter-Agency Partnership Team will discuss and attempt to resolve inter-agency issues that arise in partnership development and implementation. The Executive Director of OPPP may convene a partnership team including members of EOEA and the applicable agency to work on specific partnership issues or opportunities at those agencies as the need may arise going forward.

## **VI. PUBLIC PARTICIPATION AND PARTNERSHIPS**

EOEA and the Environmental Agencies will seek appropriate public participation in partnership decisions to promote a shared sense of responsibility for public resources and environmental assets. The nature of appropriate public participation in partnerships depends upon the type of partnership. There is a wide range of public participation that may be appropriate, depending in part upon the complexity of the partnership, the temporary or long-lasting nature of the partnership, and its degree of impact on significant natural resources or public facilities.

Some partnership projects will trigger formal public comment and participation processes required by law. For example, a partnership to undertake improvements to a building may, depending on the nature of the project and its location, exceed a threshold necessitating review under the Massachusetts Environmental Policy Act (MEPA), Mass. Gen. L. ch. 30, §§ 61-62H and 301 C.M.R. 11.00. If the filing of an Environmental Notification Form is required, then public notice will be published in the *Environmental Monitor* and a public comment period held prior to the Secretary's certificate determining whether further review is required or that the project proponent has adequately and properly complied with MEPA.

On other partnership projects, EOEA or the applicable Environmental Agency may decide to hold informal, non-mandatory public meetings to solicit public input on the proposed project. An agency may hold an informal public meeting to discuss a particular issue, or may bring a project before a regular meeting of an existing agency board or group. For example, DCR presents significant partnerships as an item for discussion at public meetings before its Stewardship Council. DFG presents its partnership projects at public meetings before the Division of Fisheries and Wildlife Board or the Marine Fisheries Advisory Commission. DAR presents partnership projects before its Agricultural Land Preservation Committee. In other instances, EOEA or the applicable agency may seek input directly from members of the public or organizations who have been involved or who have specific expertise with certain projects or issues.

## **VII. AVOIDANCE OF CONFLICTS OF INTEREST**

EOEA and the Environmental Agencies shall use best efforts to review a proposed partnership for potential conflicts of interest and must comply with the Conflict of Interest Law, Mass. Acts Gen. L. ch. 268A. In instances when there is a question about how the Conflict of Interest Law would apply to a certain situation, EOEA or the agency, whichever is applicable, shall consult with their legal counsel and, when necessary, with the State Ethics Commission to obtain advice on compliance with Chapter 268A.

## **VIII. PUBLIC ACCESS**

Partnership activities shall promote public access, use and enjoyment for all citizens. EOEA and the Environmental Agencies shall seek to enhance public awareness, education and enjoyment of natural, cultural, historic, habitat, agricultural and recreational resources consistent with applicable statutes and preserving those resources for future generations. EOEA and the Environmental Agencies shall promote recreational opportunities for the public that they serve, consistent with the applicable natural resource and its intended use.

There are limited instances and locations where public access must be carefully managed. In some cases, public access may be limited to preserve an environmentally or agriculturally sensitive area or to ensure that the carrying capacity of the natural resource is not exceeded or interrupted from its intended use. In other cases, public access may be limited either temporarily or long-term because of public safety or liability issues, or may be restricted to certain uses. Partnerships relating to such instances and locations would also require limited, restricted or managed public access as necessary to address the particular situation.

Partnerships should promote public access that will educate the public about the environment and appropriate land resource use. For example, partnerships to restore degraded wetlands may provide opportunities to educate the public about the contributions of wetlands to ecosystem health.

## **IX. CORPORATE SPONSORSHIP AND APPROPRIATE RECOGNITION OF DONORS AND PARTNERS**

Sponsorship programs are a proven method for obtaining desirable funds and services to meet environmental stewardship responsibilities of EOEA and the Environmental Agencies. EOEA and the Environmental Agencies will acknowledge their donor contributions. Most often the acknowledgement is in the form of a simple thank you letter of appreciation. The letter of appreciation should acknowledge the gift, the donor, the date of acceptance and, when possible, the estimated dollar amount of the contribution. The letter of

appreciation also serves as evidence of the donation for the donor's tax records, if applicable.

In some instances, EOEa and its Environmental Agencies may offer varying forms of acknowledgement of donor or sponsor contributions. It is preferable to express appreciation for contributions by forms of recognition other than those to be displayed at a public facility. Where a physical form of recognition at a facility is deemed appropriate, temporary forms of recognition are preferred. A donor or sponsor's request for anonymity shall be respected. While visible recognition may be a proper gesture of acknowledgement and appreciation to those contributing to environmental stewardship, such recognition must respect the dignity of the location, the mission of the applicable Environmental Agency and not detract from visitor experience.

EOEA and the Environmental Agencies will not name a historic site or a state reservation, park, forest, wildlife management area or other real property after a private corporate partner. A major donation that provides extraordinary support to the new construction or renovation of an existing facility may be acknowledged by naming a particular structure or improvement after the donor(s) or sponsor(s), upon the recommendation of the applicable Partnership Review Team, and approval by the Commissioner of the agency and the Secretary. Any naming of a particular structure or improvement shall not detract from visitor experience.

The Environmental Agencies shall not make extended long-term commitments to a corporate partner or donor to maintain plaques at a state reservation, park, forest, wildlife management area or other agency-owned real property. Such plaques should not be affixed to historic, cultural or natural resources of a site where they would intrude on the historic, cultural or natural character of the area. Placement of any new plaques recognizing corporate partners or donors at a state reservation, park, forest, wildlife management area or other agency real property must be reviewed by the applicable Partnership Review Team, and approved by the Commissioner of the agency and the Secretary.

## **X. ESTABLISHMENT OF EQUITY ISSUES WORKGROUP**

The Secretary will appoint a workgroup chaired by the Executive Director of OPPP that includes one representative from each of the Environmental Agencies and at least four other members of the public to make recommendations on how to address equity issues related to partnerships to provide better services and facilities in underserved parks and other agency facilities in low-income communities. The workgroup shall report on its findings and recommendations to the Secretary within six months of its first meeting.

## **XI. PERIODIC REVIEW OF PARTNERSHIP GUIDELINES AND OBJECTIVES**

The EOE/DCR Partnership Team and the Inter-Agency Partnership Team will make recommendations to the Executive Director of OPPP about partnership opportunities and implementation, and how to improve the process for developing and implementing partnerships. The Executive Director of OPPP shall periodically review the Guidelines, and make recommendations to the Secretary of Environmental Affairs and the Environmental Agencies for updates and revisions to improve the process for developing and implementing strategic partnerships.